IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14628 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRABHAI H.SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DIPAK C RAVAL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1, 3,
MR DHAVAL M BAROT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/07/2006

ORAL JUDGMENT

1. The petitioner herein a retired employee of the Banaskantha District Panchayat has challenged an order dated 27th August, 2003 passed by the

respondents as well as another order dated 22nd January, 2004.

2. Short facts leading to the present petition are that the petitioner while discharging his duties as a Class-III employee with respondent no.2-Banaskantha District Panchayat was proceeded against departmentally and eventually upon completion of the inquiry by order dated 25th April, 1984 penalty of compulsory retirement was imposed upon him. The petitioner challenged the order of penalty, however the appeal failed, the petitioner also approached this Court by filing Special Civil Application No.2344/85. This petition also came to be rejected by order dated 4/7/1986. In the said order observation was made by the learned Judge that it may be noted that despite the fact that the petitioner's mis-deeds warranted more severe punishment, he has only been compulsory retired where he will be able to get all retirement benefits.

3. It is the case of the petitioner that despite the said clear finding the respondents did not release the pension of the petitioner. The petitioner approached the respondents on several occasions. Eventually, only in the year 1996 the Development Commissioner ordered that the pension papers of the petitioner had prepared. Sometime thereafter, the petitioner received pension and his pension was fixed by order dated 19th March, 2002. The petitioner however subsequently received a notice

from the respondents being notice dated 22nd August, 2003 indicating that the petitioner is not entitled to receive pension and that the respondents proposed to recover the pension already paid. The petitioner has, therefore, filed this petition challenging the said notice dated 22nd August, 2003 and consequential order seeking to recover the pension already paid being order dated 22nd January, 2004 in the present petition.

4. On the other hand, the case of the respondents is that a penalty of compulsory retirement was imposed on the petitioner pursuant to departmental inquiry. As per the rules, the petitioner was not entitled to receive pension. He could have received only compassionate pension if so approved by the competent authority. In case of the petitioner such proposal was turned down by the Government. The petitioner was, therefore, erroneously paid pension. Recovery thereof is, therefore, justified.

5. Having heard learned advocates appearing for the parties, I find that the petitioner has not made out any case for being granted pension. Admittedly the petitioner was visited with major penalty of compulsory retirement. His challenge to the order of penalty failed. In terms of service regulations, therefore, the petitioner cannot seek pension. His only right was to seek consideration for compassionate pension. Considering facts and circumstances of the case competent authority found

that it is not possible to grant compassionate pension. The petitioner, therefore, cannot receive any form of pension from the respondents.

6. The question of recovery however stands on different footing. It is not in dispute that the petitioner was paid pension for a certain period. The same was on account of the order being passed in this regard by the respondents for payment of pension. Respondents have not made out a case that the petitioner had made any mis-representation or held out wrong facts to seek pension. If at all it was an error on the part of the respondents to give pension to the petitioner though the same was not due to him. In view of these facts, the reliance placed by learned advocate for the petitioner on the decision of P.H.Reddy & Ors. vs. N.T.R.D. & Ors. reported in 2002(2) SLR 694 would apply. In any case the petitioner is a retired employee. He was paid pension though erroneously. It is doubtful whether the service rules and regulations would permit the respondents to recover pension under such circumstances. Considering all these aspects of the matter, in facts of the present case, I do not find that the respondents would be justified in seeking to proceed against the petitioner to recover the pension already paid.

7. In the result the petitioner is allowed in part. The claim of the petitioner for being granted pension is turned down. Respondents are however prevented

from recovering the pension already paid. For the above purpose impugned order dated 22nd January, 2004 is quashed.

8. Rule is made absolute accordingly to the above extent. No costs.

(Akil Kureshi, J.)

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